

STEPHEN S. LANGE

IBLA 89-447

Decided March 25, 1991

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer WY 116247 for insufficient payment of advance rental fee.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Rental

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent. As the commingling, or transfer, of funds from one account to another without prior written permission is contrary to the orderly administration of the oil and gas leasing program, the offer must be rejected despite the fact that BLM held funds in other accounts to be returned to the offeror.

/APPEARANCES: Stephen S. Lange, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Stephen S. Lange has appealed from a May 11, 1989, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer WY 116247 for failure to tender the full amount of advance rental with the offer.

The lands at issue were offered for lease competitively, as parcel WY-8904-611, on April 4, 1989, and no bids were received. Accordingly, the parcel became available for noncompetitive lease offers on April 5, 1989. See 43 CFR 3110.1(b). Seventeen lease offers were received for parcel WY-8904-611, including two from Lange, on that day. As the offers were considered to be simultaneously filed, see 43 CFR 3110.2(a), a drawing was held in accordance with Departmental regulation 43 CFR 1821.2-3(b) to determine priority of the offers. Lange's lease offer at issue here was selected with first priority and his other offer was given fourth priority.

While preparing the subject lease for issuance, BLM noticed several discrepancies in Lange's lease offer. The first BLM reported as follows: "Your offer is for parcel WY-8904-611 but the land description is for parcel WY-8904-601." As 43 CFR 3110.5-1 provides that the proper description for a noncompetitive offer received within the first month after the

competitive process is the parcel number employed by the competitive process, BLM held that the lease offer was properly included in the drawing for parcel WY-8904-611.

The second discrepancy identified by BLM involved the rental payment for the subject offer. While the check received was for \$375 (\$300 rental amount plus \$75 processing fee), the required rental was \$775.50. Since the \$475.50 rental deficiency exceeded 10 percent, BLM rejected the offer, citing 43 CFR 3103.2-1.

In his statement of reasons, Lange admits that a mistake was made while preparing the lease offer form for the subject offer. He explains that after completing one form for parcel WY-8904-611 and a check for the rental and fees, he prepared a second offer for this parcel, the one at issue here. He states that after entering the correct parcel number, he mistakenly used the land description for another parcel for which he was making an offer, *i.e.*, parcel WY-8904-601, and, therefore, he entered incorrect acreage and rental amounts. The rental amount remitted, he notes, was based on the incorrect acreage and rental amount written on the form. ^{1/}

Lange argues that, while his first-priority offer was rejected because of deficient funds for the first-year rental, a total of \$1,225.50 had been remitted to BLM, citing the combined payments tendered with his three offers made on April 5, 1989. Lange contends that the purpose of advanced rentals is to protect BLM from default by the party making the offer to lease and avers that BLM was protected in this instance because the funds sent by him and in BLM's possession at the time it reviewed the offer were in excess of the amount required for the lease offer drawn with first priority. Lange also alludes to the fact that BLM kept the amount of the first-year rental, \$775.50, and refunded the remaining monies submitted for the three offers, minus the processing fees.

Departmental regulation 43 CFR 3103.2-1(a) provides that "each noncompetitive lease offer shall be accompanied by full payment of the first year's rental," except that any offer deficient by the lesser of 10 percent of the offer or \$200 may be accepted if the deficit is tendered within 30 days. (Emphasis added.) It is a well-established rule of the Department that noncompetitive oil and gas lease offers have not satisfied regulatory requirements and will be rejected where the offeror fails to tender sufficient rental and the deficiency is more than 10 percent of the proper amount due. Dorothy L. Davis, 88 IBLA 282 (1985), and cases cited. ^{2/}

^{1/} Lange submitted three offers on Apr. 5, 1989, each accompanied by a separate check. Lange's second offer for parcel WY-8904-611, that placed fourth in priority, was accompanied by a check for \$850.50. An offer for parcel WY-8904-601, which placed second in priority, was accompanied by a check for \$375.

^{2/} Several of the cited cases involved the requirement when it was published as 43 CFR 3103.3-1. Revision and publication as 43 CFR 3103.2-1(a) occurred effective Aug. 22, 1983, without substantive modification to the requirement. See 48 FR 33662 (July 22, 1983).

Per se disqualification of a lease offer is appropriate where failure to comply with regulations adversely affects the ability of the Department to establish the eligibility of an offer or to protect the integrity of the simultaneous leasing system. See CNG Producing Co., 102 IBLA 210 (1988). While appellant insists that the leasing system is not jeopardized by commingling lease offer accounts, we find no merit in such argument.

The requirement to pay rental according to the regulations is grounded in section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1988), where Congress mandates a lessee to pay the rental "in advance." As an offer is considered incomplete without the payment of the first-year's rental, failure to tender rental goes to the adequacy of an offer. Thus, insufficient remittance of rental payment and other fees does not constitute a technical, or nonsubstantive, defect which may be waived by the Department. Because an offer without a sufficient remittance of the rental payment is contrary to the statute and regulations, it is properly rejected.

Appellant asks us to apply the funds tendered for two other offers made on the same day. Orderly administration of the oil and gas leasing program, however, demands that rentals be paid to BLM in a manner consonant with administrative convenience. This necessarily precludes BLM from transferring, without prior written instruction, money paid for one purpose to another, e.g., rental money tendered for one offer to another. Neither of appellant's other offers were spurious or defective. To transfer the money tendered with those offers would render them ineligible as offers, a result appellant could not have intended when he submitted them. The Department refuses to have BLM guess as to a party's intentions in oil and gas leasing matters. Thus, the commingling of accounts without prior written instructions has been rejected by the Department as disruptive to the orderly administration of the leasing program. See Energy Resources Associates, 102 IBLA 329, 332 (1988). We therefore conclude that the failure to tender sufficient rental for an offer cannot be cured by recourse to other funds available in the absence of valid written instructions after the drawing at which priority of offers was determined.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge